

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.**

In the Matter of	)	
	)	
Application by SBC Communications Inc.,	)	
Southwestern Bell Telephone Company, and	)	CC Docket 00-65
Southwestern Bell Communications Services,	)	
Inc. d/b/a Southwestern Bell Long Distance	)	
for Provision of In-Region, InterLATA	)	
Services in Texas	)	

Second Application by SBC Communications  
For Authorization to Provide In-Region InterLATA Services  
In Texas

**COMMENTS OF THE COMPETITION POLICY INSTITUTE**

Ronald J. Binz, President  
Debra R. Berlyn, Executive Director  
Joshua M. Bobeck, Policy Counsel  
1156 15th St. N.W. Suite 520  
Washington, D.C. 20005  
Phone: 202-835-0202  
Fax: 202-835-1132

April 26, 2000

COMMENTS OF THE COMPETITION POLICY INSTITUTE

**I. INTRODUCTION AND SUMMARY**

In its first application for § 271 entry in Texas, SBC claimed that its application stood up to the requirements of the Telecommunications Act of 1996 and Commission precedent in every measure.<sup>1</sup> The Competition Policy Institute<sup>2</sup> (“CPI”) and other parties disagreed, arguing that the application neither demonstrated checklist compliance nor satisfied the Commission’s public interest test. SBC, after voluntarily withdrawing its initial application, immediately filed a second application, along with supplemental evidence.<sup>3</sup>

SBC apparently acknowledged the flaws in its original application and took the necessary step of withdrawing the application. But withdrawing the application, without providing a remedy for the deficiencies identified in the Commission’s proceeding, is insufficient. Repackaging a flawed application and wrapping it a new docket number does not alter the substance of the evidence.

In our previous comments, CPI showed that SBC’s application failed to measure up to Commission precedent established in its *New York Order*.<sup>4</sup> We argued that SBC’s loop provisioning performance, for hot cuts and for xDSL-capable loops, was insufficient to merit § 271 approval. SBC’s first application also failed to satisfy the public interest requirement under § 271 since its third party test of OSS and its performance remedy plan were inadequate in

---

<sup>1</sup> See *Application by SBC Communications Inc. for Authorization under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of Texas*, CC Docket 00-4, filed Jan 10, 2000.

<sup>2</sup> CPI is an independent, non-profit organization that advocates state and federal policies to promote competition in telecommunications and energy services in ways that benefit consumers. Complete information about CPI can be obtained from our web site at <www.cpi.org>.

<sup>3</sup> *Ex Parte* Letter from Michael K. Kellogg to Magalie Roman Salas, CC Docket 00-4, filed April 5, 2000 at p. 2. See also *Application by SBC Communications Inc., To Provide In-Region, InterLATA Services in Texas*, CC Docket 00-4, *Order*, FCC 00-124, (rel. April 6, 2000) ¶ 2-3.

light of the *New York Order* standard. Accordingly, we recommended that the Commission deny that first application.

CPI was not alone in making this recommendation. In its evaluation, the Department of Justice recommended that the Commission deny SBC's application.<sup>5</sup> In addition, when SBC indicated that it would supplement its initial application, Chairman Kennard identified issues that SBC should address in such filing: hot cut loops, unbundled loops for advanced services, and OSS integration.<sup>6</sup>

SBC subsequently filed supplemental affidavits addressing those three issues. But after reviewing the supplemental evidence, we continue to hold that SBC does not demonstrate checklist compliance or satisfaction of the statutory public interest test. As an example, SBC's new application fails to show improved compliance with checklist item § 271(c)(2)(B)(iv), unbundled loops, particularly in its coordinated loop cutover ("hot cut") performance.

In the required public interest analysis, SBC policy in two areas casts doubt on the company's assertion that it will maintain compliance with § 271 once the Commission grants its request for in-region, interLATA authority. First, we are concerned that aspects of SBC's Project Pronto network architecture may actually roll back some of the progress made toward local telecommunications competition in Texas. Second, SBC's policies dealing with competitors appear to forestall broad-based competition for bundled voice and data service, an area that has become ground zero in local exchange competition.

---

<sup>4</sup> See *Application of Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region InterLATA Services in the State of New York*, CC Docket No. 99-295, *Memorandum Opinion and Order*, FCC 99-404 (Dec. 22, 1999) ("*New York Order*").

<sup>5</sup> Evaluation of the Department of Justice, CC Docket 00-4, filed Feb 14, 2000.

<sup>6</sup> Statement of FCC Chairman William E. Kennard on SBC 271 Filing, rel. April 3, 2000.

SBC's Project Pronto will reconfigure its network, pushing fiber deeper into the network closer to homes and business, thus shortening the copper loops. This will enable faster DSL speeds and make DSL available to a greater number of the company's customers. But Project Pronto has other effects as well. Since the copper loops will terminate at a remote terminal and not a central office, there is much less space (if any) in which CLECs can collocate their equipment. Further, there is a host of unresolved questions whose resolution will determine where CLECs can connect to the Project Pronto network, what types of equipment they can use to connect, who owns the equipment, what services CLECs can provide over such equipment, and at what speeds.<sup>7</sup> SBC's current answers to these issues seem to foreclose the possibility of CLECs using the proposed network architecture to provide DSL service distinct from SBC's ADSL product offering.<sup>8</sup>

Other SBC policies enhance SBC's position as the only telecommunications company in Texas (after §271 approval is granted) with all the pieces to offer consumers a complete package of services. To cement this position, SBC currently refuses to allow CLECs that use the UNE-platform ("UNE-P") to combine voice service with xDSL service over that single UNE-P loop. By denying CLECs that capability, SBC can close off an avenue of competition for its package of ADSL and voice services.

SBC also thwarts voice competition from CLECs when it refuses to allow CLEC voice customers to choose SBC's ADSL service. This means that SBC can use its near-term advantage

---

<sup>7</sup> See Comments of DSL Access Telecommunications Alliance ("DATA"), *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310 (d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, filed March 3, 2000, ("SBC-Ameritech Merger Conditions Proceeding"); Public Notice, *Common Carrier Bureau and Office of Engineering and Technology Announce Public Forum on Competitive Access to Next Generation Remote Terminals*, CC Docket 96-98, CC Docket No. 98-147,

in the DSL market to insulate its voice services from competition. Until SBC resolves these outstanding issues, the Commission cannot determine that SBC has fully opened its local market to competition or provided the assurance that markets will remain open.

For these reasons, CPI urges the Commission to conclude that SBC's second Texas application, like the first one, is premature.

**II. SBC'S SUPPLEMENTAL EVIDENCE PROVIDES NO ADDITIONAL EVIDENCE THAT SBC COMPLIES WITH THE CHECKLIST.**

In our comments on SBC's initial application, we argued that SBC failed to offer evidence that satisfied the Commission's standard for hot cut loop provisioning established in the *New York Order*. Despite SBC's attempt to recharacterize the old evidence from its initial application, this second application shows little substantive improvement. We think that SBC should have compiled additional data that could demonstrate checklist compliance on critical issues. Instead, SBC excuses its poor performance on hot cuts and promises that process improvements have ameliorated its deficient performance. The Commission should not accept this substitute for actual satisfactory performance. SBC should be told to submit a complete record of compliance before the Commission grants in-region, inter-LATA authority in Texas.

In the *New York Order*, the Commission recognized the fundamental role that hot cut loops play in developing competition for local telecommunications service. The Commission stated that "the ability of a BOC to provision working, trouble-free loops through hot cuts is of critical importance in view of the substantial risk that a defective cut will result in end-user customers experiencing service disruptions that continue for more than a brief period."<sup>9</sup>

---

NSD-L-00-48, DA-00-891 (rel. April 19, 2000) ("*Competitive Access to Next Generation Remote Terminals Notice*").

<sup>8</sup> See Reply Comments of SBC, *SBC-Ameritech Merger Conditions Proceeding*, filed March 10, 2000.

<sup>9</sup> *New York Order* ¶ 299.

In commenting on SBC's first Texas 271 application, many parties stated that SBC did not provide competitors with hot cut loops in conformity with the *New York Order* standard. In its supplemental filing, SBC offers data claiming to demonstrate improved performance, offering cutover data disaggregated according to the two cutover methods it uses, Frame Due Time ("FDT") method and the Coordinated Hot Cut ("CHC") method.<sup>10</sup>

SBC's data for the Frame Due Time ("FDT") cutover process shows 12.9% of FDT loops provisioned in December experienced outages, 17.6% in January experienced outages and 15.7% in February experienced outages.<sup>11</sup> For the CHC process, SBC's data shows 1.6% of cuts in December 1999 experienced outages, 0% in January, while 6.6% of the CHC hot cuts in February experienced outages.<sup>12</sup>

The total number of cutovers varied widely during the three-month period for which SBC provides data. For FDT cuts, the total went from 2083 in December to 1293 in January and to 2258 in February.<sup>13</sup> For CHC cuts, the total went from 2129 in December, to 1349 in January, to 1896 in February.<sup>14</sup> We think the Commission should be particularly concerned with the increase in the percentage of service outages, given the decrease in total loops cut over using each process. The Commission should also be concerned that these numbers reflect performance that is inconsistent with SBC's claims in its application, filed during the period reflected here.

SBC attempts to explain away this poor performance, suggesting that January's failures were due to "process breakdowns" that it subsequently addressed by retraining its service

---

<sup>10</sup> In its original application, SBC only provided data from the CHC method, not the FDT.

<sup>11</sup> SBC Conway/Dysart supp. aff. ¶ 27.

<sup>12</sup> *Id.* ¶ 27.

<sup>13</sup> *Id.* ¶ 9.

<sup>14</sup> *Id.*

representatives.<sup>15</sup> As we argued above, the Commission should require SBC to provide evidence that demonstrates these retraining efforts have worked. Such evidence might include, for example, data for March and April 2000 that would allow the Commission to determine whether SBC's performance in this critical area was actually improving.

SBC also attributes the rash of service outages to a "Cut Outside the Window", explaining that such cuts are either premature or late.<sup>16</sup> CPI notes that SBC measures and reports data on premature disconnects in the hot cut process for Performance Measurement 114. The data for this measure shows premature disconnects using the CHC process rising from 0.5% in December, to 3.9% in January to 11.2% in February, while the total number of loops cutover using the CHC process went from 2129 in December, to 1349 in January and 1896 in February.

SBC's data for FDT hot cut premature disconnects also reflect an increase, from 0.7% in December to 1.0 % in January to 4.2% in February, at the same time that the number of hot cuts provisioned went from 2083 in December to 1293 in January to 2258 in February.<sup>17</sup> We specifically call attention to a 3.5% jump in FDT premature disconnects from December to February when the number of FDT hot cuts increased by 175.

Taken together, SBC's data shows an overall decrease in hot cut loops provisioned between December and February. At the same time, its level of performance deteriorated. This is a troubling trend. Given the expectation that orders for hot cuts will only increase as competition takes root, the Commission must have evidence that SBC can handle increased demand for hot cut loops before concluding that SBC satisfies this checklist item. Since SBC's evidence shows it cannot even maintain performance levels during a period of decreasing

---

<sup>15</sup> *Id.* ¶ 31-32.

<sup>16</sup> *Id.* ¶ 29.

<sup>17</sup> *Id.* ¶ 9.

demand, it is impossible to see how the Commission could conclude that SBC will improve its performance as volumes increase.

Before accepting SBC's assertion that its process improvements will improve hot cut performance, the Commission should require SBC to show such changes actually work by providing the Commission with raw data for March and April 2000. Only then can the Commission determine whether SBC's process improvements translate into improved hot cut performance that allows CLECs a meaningful opportunity to compete. Until the Commission can make such a determination, it should deny SBC's application for § 271 authority in Texas.

**III. SBC'S APPLICATION FAILS TO MEET THE PUBLIC INTEREST TEST SINCE SBC DOES NOT GIVE THE COMMISSION REASONABLE ASSURANCES THAT IT WILL CONTINUE TO COMPLY WITH THE 1996 ACT AFTER OBTAINING IN-REGION, INTERLATA AUTHORITY.**

In order for the Commission to conclude that SBC's application is consistent with the public interest, SBC must provide the Commission with reasonable assurances that it will continue to comply with the market opening measures of § 271 if it obtains in-region, interLATA relief.<sup>18</sup> A fundamental principle underlying these market-opening measures is that CLECs must have access to ILCE facilities "in a manner that allows them to provide the services they seek to offer."<sup>19</sup> As the Commission has recognized, competition for advanced services is an increasingly important element of local telecommunications competition. If only ILECs can deploy advanced services effectively, consumers will never reap the full benefit of broadband.

The Commission should be vigilant that SBC, in its effort to bring more bandwidth to its customers, does not impede CLECs' access to the unbundled network elements they need to

---

<sup>18</sup> See *New York Order* ¶ 423, 429.

<sup>19</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Third Report and Order, Fourth Further Notice of Proposed Rulemaking*, FCC 99-238 ("UNE Remand Order") ¶ 13.



compete. In addition, the Commission must be sure that, as advanced services competition takes root in Texas, SBC does not stifle the growth of competition in other telecommunications markets, particularly the voice market. Consumers should have a choice of both voice and data providers in order to obtain packages of voice and advanced data services.

**A. SBC Must Assure The Commission That The Project Pronto Network Architecture Will Not Reverse Progress Toward Competition in Texas, Including Competition for Advanced Services.**

In the context of its application for § 271 authority in Texas, SBC must give the Commission reasonable assurances that its network restructuring, Project Pronto, will be implemented consistently with SBC's obligations under § 251 and § 271 of the 1996 Act and will not impede competition for advanced services.

When SBC introduced its Project Pronto initiative in October 1999, the company promised that "SBC will lead the nation in speeding the widespread availability and meeting the demand for broadband and emerging broadband-powered services."<sup>20</sup> However, its press release made no mention of how the company would continue to serve its wholesale customers within the Project Pronto network architecture. Nor did SBC discuss its implementation of Project Pronto in any detail in its initial Texas 271 application. CPI is concerned that, while allowing SBC to deploy fiber closer to its customers, Project Pronto could impede the CLECs' ability to compete with SBC for those customers.

Both CLECs and the Commission recognize the implications Project Pronto may have for the ability of CLECs to compete. CLECs fear that Project Pronto will lessen their ability to offer

---

<sup>20</sup> SBC Communications, Inc., *SBC Launches \$6 Billion Broadband Initiative*, Press Release (Oct. 18, 1999) ("*Project Pronto Press Release*"), p.1 (Attachment 2 to AT&T Pfau/Chambers Decl., CC Docket 00-4, filed Jan. 31, 2000).

services that distinguish them from SBC.<sup>21</sup> The Commission recognizes the potential impact Project Pronto may have on CLEC access to ILEC facilities for UNEs and collocation, noting that, “[f]or competitive LECs who want to provide telecommunications services, including advanced services, to customers served via remote terminals there is often little or no space available for collocation inside the structures used to house the remote equipment.”<sup>22</sup>

Although we don’t necessarily agree with some CLECs that contend SBC developed Project Pronto precisely to thwart competition, the Commission must obtain specific assurances that SBC will not allow the Project Pronto architecture to limit CLECs’ opportunity to compete for all telecommunications services. SBC must convince the Commission that it will be possible for CLECs to collocate the necessary equipment (e. g., DSLAMs) at remote terminals, as currently required.<sup>23</sup> SBC must also assure the Commission that it will permit CLECs to choose the linecard arrangement that suits the CLECs’ needs and allows each CLEC to deploy the “services it seeks to offer.”<sup>24</sup>

We applaud the Commission for scheduling the roundtable public forum on competitive access to next-generation remote terminals. We believe that this forum will provide the basis for SBC to demonstrate to the Commission that the rollout of Project Pronto will not result in a rollback of the progress of local telecommunications competition in Texas.

**B. SBC Must Assure The Commission It Will Not Discriminate Against CLECs That Seek To Use UNEs To Provide Bundled Voice And Data Services In Texas.**

Most observers recognize that consumers will increasingly desire to purchase a package of telecommunications services to lower the price they pay and increase their convenience

---

<sup>21</sup> Comments of DATA Alliance, *SBC-Ameritech Merger Conditions Proceeding*, filed March 10, 2000.

<sup>22</sup> *Competitive Access to Next Generation Remote Terminals Notice* p. 1-2.

<sup>23</sup> See 47 C.F.R. § 51.319(a)(2); *UNE Remand Order* ¶ 209-210, 217-218.

through a single, unified bill. This consumer demand partly underlies the recent wave of telecommunications mergers. Of course, SBC also recognizes this trend; its application for in-region, interLATA authority is part of its plan to offer its Texas customers a full menu of telecommunications services.<sup>25</sup>

The Internet's growing importance in the economy and in consumers' daily lives means that high-speed access to the Internet through advanced services such as DSL is becoming an integral component in those service packages. The Commission also recognizes the connection between the availability of the UNE-P and the development of broad-based competition in the residential and small business telecommunications market.<sup>26</sup> SBC's own data underscores the importance of the UNE-P to local competition, showing that approximately 80% of loops CLECs purchase from SBC in Texas are UNE-P loops.<sup>27</sup>

It follows that competitors using the UNE-platform must be able to compete effectively when offering packages of voice and data services to consumers. If the incumbent, through its control of bottleneck facilities in the local loop, can dictate the services available to competitors and the price customers pay, it is unlikely that competition will ever develop on the scale envisioned by the 1996 Act.

Unhappily, this is the current state of local competition in Texas. SBC is the only carrier that can offer residential consumers an affordable package of voice and data. SBC's

---

<sup>24</sup> See *UNE Remand Order* ¶ 209-210, 217-218.

<sup>25</sup> See *Project Pronto Press Release* p. 2, 3.

<sup>26</sup> See *UNE Remand Order* ¶ 11-12.

<sup>27</sup> See *SBC Conway/Dysart supp. aff.* ¶ 39.

fundamental advantage is that, while it can sell its voice and data package using a single loop, SBC requires its competitors to use two loops, one for data and one for voice.<sup>28</sup>

This competitive disparity is exactly the problem the Commission sought to eliminate in the *Line Sharing Order*.<sup>29</sup> In that order, the Commission concluded that incumbents could leverage their monopoly over the local loop, dominating the advanced services market in their respective regions.<sup>30</sup> To alleviate this competitive imbalance, the Commission required ILECs to unbundle the high-frequency portion of the loop (“HFPL”).<sup>31</sup> In this way, competitors can access the HFPL on the same terms as the incumbent’s data affiliate. The *Line Sharing Order* thus levels the playing field for CLECs competing with an ILEC’s data affiliate selling DSL service to customers that already subscribe to the ILEC for voice.<sup>32</sup> It does not, however, solve the problem when a CLEC seeks to offer both voice and data using a platform of network elements.

Several SBC policies related to the *Line Sharing Order* and UNE-P have the effect of forestalling competition in residential and small business markets for packaged voice and data service. First, SBC denies CLECs the ability to provide xDSL advanced services in conjunction with voice services provided over the UNE-P loop. Second, SBC refuses to allow a CLEC’s voice customers to obtain ADSL service from SBC over the same loop used to provide the

---

<sup>28</sup> SBC even maintains its advantage when a CLEC receives the second loop using the 50% line sharing discount included in the SBC-Ameritech merger conditions, since the CLEC pays 50% of the loop price and SBC’s data affiliate pays nothing.

<sup>29</sup> *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket 98-147, *Third Report and Order*, FCC 99-355, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, *Fourth Report and Order*, (rel. Dec. 9, 1999) (“*Line Sharing Order*”).

<sup>30</sup> *See id.* ¶ 5.

<sup>31</sup> *Line Sharing Order* ¶ 25.

<sup>32</sup> *Id.* ¶ 40-42

CLEC's voice service. Customers are being forced to drop CLEC voice service and switch back to SBC for voice if they want SBC's ADSL service.<sup>33</sup>

Attempts to negotiate the process and procedures that would allow CLECs to provide data service over UNE-P loops have proved fruitless.<sup>34</sup> Although SBC admitted in its reply brief in its first Texas § 271 application that this arrangement was technically possible, the company refuses to cooperate with CLECs that want to establish such service.<sup>35</sup>

When this issue first arose in the Public Utility Commission of Texas' investigation of SBC's first application, SBC stated that CLECs that wish to combine DSL with UNE-P voice must do so with two separate loops.<sup>36</sup> In further communications with CLECs, SBC maintains that it need not support DSL over the UNE-P. Instead, SBC proposes a complicated process that threatens greater service disruption for the customer than a regular hot cut.<sup>37</sup> In addition, SBC claims that the operational support for a UNE-P/DSL combination is a design and engineering responsibility of the requesting CLEC, despite the fact the necessary facilities are all within SBC's physical control.<sup>38</sup>

---

<sup>33</sup> See AT&T Pfau/Chambers Decl., CC Docket 00-4, filed Jan. 31, 2000 at ¶ 29.

<sup>34</sup> See Comments of Participating CLECs, Notification of Final Status of Advanced Services OSS Plan of Record, *SBC-Ameritech Merger Conditions Proceeding*, filed April 3, 2000 p. 18.

<sup>35</sup> See Reply Brief of SBC, CC Docket 00-4, p. 37 n. 19 (AT&T is free to offer both voice and data over the UNE—platform or other UNE arrangements, whether by itself or in conjunction with its xDSL partner.") See also SBC Cruz supp. aff. ¶ 6.

<sup>36</sup> *Investigation into Southwestern Bell Telephone's Entry into the Texas InterLATA Telecommunications Market, Project No. 16251*, Hearing on the Merits Before the Public Utility Commission of Texas at 355. (Attachment 13 to AT&T Pfau/Chambers Decl.).

<sup>37</sup> See Jan 5, 2000 email from Patricia Bonham, SWBT, to Sean Minter, IP Communications at p. 2 (Attachment no. 16 to AT&T Pfau/Chambers Decl.).

<sup>38</sup> See Jan. 18, 2000 email from Robert Bannecker, SWBT to Julie Chambers AT&T p.1 (Attachment 17 to AT&T Pfau/Chambers Decl.).

SBC exacerbates this competitive problem by using its advantage in DSL service to thwart potential voice competition. For example, SBC admits that it will not provide ADSL service to a customer that receives voice service from a CLEC.<sup>39</sup>

The combination of SBC's refusal to implement UNE-P line sharing with its refusal to serve CLEC voice customers presents a curious set of choices for a consumer in Texas that wants both DSL and voice telephone service. First, the consumer can obtain both services from SBC. Second, once Line Sharing takes effect in Texas, the consumer can obtain voice service from SBC and DSL service from a CLEC without incurring the cost of a second loop.

If, however, the consumer wants a local voice service provider other than SBC, the consumer faces a quandary when adding DSL service. According to SBC policy, the consumer cannot select a CLEC for voice service and SBC for ADSL service. If the consumer remains adamant about the choice of a CLEC for voice service, and still wants DSL, the only option is for the customer to pay for two loops. The first loop is the UNE-P loop for voice and the second loop is for DSL, but the DSL provider must still pay the full cost of the second loop. Given the costs associated with that second loop, and the likelihood the DSL provider will factor that cost into its price, it is more likely that the consumer will choose to pay the lower prices when SBC provides the voice in a line sharing arrangement with either a CLEC or its own DSL affiliate.<sup>40</sup> Either way, SBC maintains its monopoly position in the market for voice services. This is the exercise of market power, not competition.

If the Commission is concerned about SBC's future compliance with § 271, it should require the company to eliminate these impediments to competition before granting in-region,

---

<sup>39</sup> See AT&T Pfau/Chambers Decl. ¶ 29.

interLATA relief. The Commission should take the opportunity in this proceeding to enable broad-based mass-market competition for all local telecommunications services in Texas, including bundled voice and data services. To ensure robust competition for bundled voice and data services, the Commission should also require SBC to negotiate in good faith with CLECs to develop reasonable and non-discriminatory procedures permitting CLECs to add DSL service to UNE-P voice service. Once SBC permits line sharing over UNE-P, its refusal to allow its advanced services to share a line with CLEC voice service would have little competitive effect, except perhaps on the market share of SBC's advanced services affiliate.

---

<sup>40</sup> We note that the CLEC could choose to serve the customer using a hot cut loop instead of the platform, provided proper collocation agreements and equipment are in place. However, given the extra costs and delays associated with hot cuts, CPI is not sure the CLEC improves its competitive position with this route.

**V. CONCLUSION**

CPI respectfully recommends that the Commission deny SBC's second application for in-region, interLATA authority in Texas. SBC fails to demonstrate that its performance in providing hot cut loops complies with the Commission's standard announced in the *New York Order*. For that reason, the application fails to meet the statutory checklist in § 271(c)(2)(B). In addition, SBC fails to satisfy the independent public interest requirement of the statute. Commission precedent establishes that, in order to satisfy the public interest standard, SBC must provide the Commission with reasonable assurances that it will continue to comply with § 271 in the event the Commission approves its application. SBC's current planned network upgrade calls into question SBC's ability and willingness to continue to meet its statutory obligations. Moreover, SBC's current policies appear to forestall broad-based competition for packages of voice and data service. Until SBC changes these policies and makes a substantial effort to remove impediments to competition, the Commission should deny its application for in-region, interLATA authority in Texas.

Respectfully submitted,

**COMPETITION POLICY INSTITUTE**

/s/

---

Ronald J. Binz, President  
Debra R. Berlyn, Executive Director  
Joshua M. Bobeck, Policy Counsel

Competition Policy Institute  
1156 15th St., NW Suite 520  
Washington, D.C. 20005

April 26, 2000